SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~1248.~~ ~~826~~ 491

THE UNITED STATES, APPELLANT,

vs.

JUNG AH LUNG.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

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1 U. S. circuit court, ninth circuit and district of California.

In the matter of Jung Ah Lung, on habeas corpus, No. 3910.

Transcript on appeal.

S. G. Hilborn, esq., U. S. attorney; John Flournoy and W. F. Gibson, esq's, attorneys for Jung A. Lung.

2 In the district court of the United States, district of California.

In the matter of Jung Ah Lung on habeas corpus, No. 3749.

Bill of exceptions.—Petition.

Be it remembered that at the August term, A. D. 1885, of the said district court, the above matter came on regularly to be heard, and the petitioner, to maintain the issue upon his part, presented and read the petition for a writ of habeas corpus, filed on his behalf on the 28 day of September, A D. 1885, which said petition is in the words and figures following, to wit:

In the district court of the United States, district of California.

In the matter of Jung Ah Lung on habeas corpus, No. 3749.

3 To the Hon. Ogden Hoffman, judge of the district court of the United States, district of California.

The petition of Chung Way Lung respectfully shows:

That Jung Ah Lung is unlawfully imprisoned, detained, confined, and restrained of his liberty by E. C. Reed, master of the steamship San Pablo, in the city and county of San Francisco, State of California, district of California.

That the said imprisonment, detention, confinement, and restraint are illegal, and the illegality thereof consists in this, to wit:

That it is claimed by said E. C. Reed that said Jung Ah Lung is a subject of the Emperor of China, and must and cannot be allowed to land, under the provisions of the act of Congress of May 6th, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese," and the act amendatory thereof and supplemental thereto.

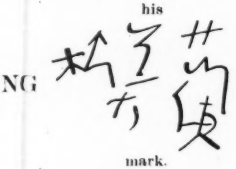
4 That said Jung Ah Lung does not come within the restrictions of said act, but, on the contrary, your petitioner alleges that said Jung Ah Lung was attacked by pirates on his way to embark for San Francisco, who deprived him of his custom-house certificate received by him on returning to China, in the month of October, A. D. 1883.

That your petitioner makes this petition on behalf of said Jung Ah Lung; wherefore your petitioner prays that a writ of habeas corpus may be granted, directed to the said E. C. Reed, master of the said steamship, commanding him to have the body of said Jung Ah Lung before your honor at a time and place therein to be specified, to do and receive what shall

then and there be considered by your honor concerning him, together with the time and *course* of his detention, and said writ; and that he may be restored to his liberty.

Dated on the 28th day of September, 1885.

his

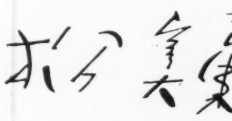
CHUNG  WAY LUNG,

mark.

Petitioner.

5 STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO,
District of California, United States of America, ss:

Chung Way Lung being duly sworn, says that he is the petitioner above named, and that he has heard read the foregoing petition, and knows the contents thereof, and the same is true of his own knowledge.

CHUNG  WAY LUNG.

Sworn to before me this twenty-eighth day of September, 1885.

SOUTHARD HOFFMAN,
Commissioner U. S. Circuit Court, District of California.

(Endorsed:) Filed Sept. 28, 1885. Southard Hoffman, clerk.

Petitioner also presented and read the order of said district court,
6 made and signed by honorable Ogden Hoffman, district judge, on said 28th day of September, granting said writ, which said order is in the words and figures following, to wit:

In the district court of the United States, district of California.

In the matter of Jung Ah Lung on habeas corpus, No. 3749.

Bill of exceptions. Order granting writ.

Upon reading and filing the petition of Chung Way Lung, duly signed and verified by him, wherein it is alleged that Jung Ah Lung is illegally imprisoned and restrained of his liberty by E. C. Reed, master of the steamship San Pablo, from which petition it appears to me that a writ of habeas corpus ought to issue:

It is ordered that a writ of habeas corpus issue out of and under the seal of the district court of the United States for the district of California,
7 directed to said E. C. Reed, master of said steamship, commanding him to have the body of said Jung Ah Lung before me, in the court

room of said court, on the twenty-ninth day of September, 1885, at eleven o'clock a. m. of that day, to do and receive what shall then and there be considered concerning the said Jung Ah Lung, together with the time and cause of his detention, and that he have then and there the said writ.

Dated at San Francisco, California, this 28th day of September, 1885.

OGDEN HOFFMAN,
District Judge.

(Endorsed:) Filed September 28, 1885. Southard Hoffman, clerk.

Petitioner also put in evidence the writ of habeas corpus and return thereto, which is in the words and figures following, to wit:

8 In the district court of the United States, district of California.

In the matter of Jung Ah Lung on habeas corpus, No. ——.

Bill of exception. Writ of habeas corpus.

The President of the United States of America to E. C. Reed, master of the steamship San Pablo, greeting:

You are hereby commanded that you have the body of Jung Ah Lung, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Jung Ah Lung shall be called or charged, before the honorable Ogden Hoffman, judge of the district court of the United States for the district of California, at the court room of said court, in the city and county of San Francisco, California, on the 29th day of September, 1885, at 11
9 o'clock a. m., to do and receive what shall then and there be considered concerning the said Jung Ah Lung, and have you then and there this writ.

Witness the Hon. Ogden Hoffman, judge of the said district court, and the seal thereof, at San Francisco, in said district, on the 28th day of September, A. D. 1885.

[SEAL.] SOUTHARD HOFFMAN,
Clerk of said District Court.

[Endorsed.]

In obedience to the within writ, I hereby produce the body of Jung Ah Lung, as within directed, and return that I hold him in my custody by direction of the customs authorities of the port of San Francisco, California, under the provisions of the Chinese restriction act.

W. F. BRYAN,
Supt. Steamship San Pablo.

SAN FRANCISCO, *September* 28, 1885.

10 Issued September 28, 1885. Returnable September 29, 1885.
Filed on return this 29th day of September, 1885.

SOUTHARD HOFFMAN,
Clerk of said U. S. Dist. Court,
By A. D. GRIMWOOD,
Deputy Clerk.

Bill of exceptions.

On the 12th day of October, A. D. 1885, by order of said district court, duly entered upon the minutes, S. G. Hilborn, esq., United States attorney for the district of California, was allowed to file a special intervention and plea to the jurisdiction of said district court on behalf of the United States.

Thereupon said United States attorney filed said special intervention and plea, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of California:

In the district court of the United States in and for the district of California.

11 In the matter of Jung Ah Lung on habeas corpus, No. 3749.

Intervention of U. S. att'y on behalf of the United States, and plea.

To the Honorable Ogden Hoffman, judge:

And now comes S. G. Hilborn, United States attorney for the district of California, leave of the court being first granted, and files his intervention for and in behalf of the United States in the matter of the application made on behalf of said Jung Ah Lung for a writ of habeas corpus, and respectfully makes opposition to the said writ, and says that the same ought to be dismissed, and no further proceedings be had under said petition and writ, and for ground therefor states as follows:

Intervenor says it is not true that the petitioner is imprisoned, detained, confined, or restrained of his liberty by the master of the steamship San Pablo, as stated in the petition filed herein, or otherwise.

12 Intervenor denies that petitioner is so imprisoned, detained, confined, or restrained of his liberty as to entitle him to the benefit of the writ of habeas corpus, or that this court can properly issue the said writ in this case.

Intervenor says that this court has no jurisdiction to consider the facts or the law relating to this case, because the collector of the port of San Francisco has fully considered all the matters of law and fact involved herein, and passed judgment thereon, and the same is res adjudicata.

Intervenor alleges the facts to be that the petitioner, who is a Chinese person, and a laborer, on or about the twenty-second day of August, 1885, at Hong-Kong, in China, the same then and there being a foreign port or place, voluntarily went on board of the steamship San Pablo, whereof E. C. Reed was then and there and still is the master, said vessel then

13 and there belonging to the Occidental and Oriental Steamship Company, and engaged in the business of transporting passengers and merchandise between the port of San Francisco, in the State of California, and the port of Hong-Kong, in China, as a passenger, and applied for and purchased a ticket entitling him to a passage to the port of San Francisco from said foreign port of Hong-Kong. That thereafter, to wit, on or about the twenty-second day of August, 1885, the said steamship sailed on her said voyage to said port of San Francisco, where she arrived on or about the fifteenth day of September, 1885, with said petitioner on board thereof.

That on the arrival of the said steamship at the port of San Francisco, with petitioner on board as a passenger as aforesaid, and before any Chinese passengers were landed, the collector of customs of said port proceeded to examine this petitioner as required by section 9 of the act of Con-
14 gress entitled "An act to execute certain treaty stipulations relating to Chinese," passed May 6, 1882, and upon such examination decided and determined that petitioner was not entitled to enter the United States, and has refused and still does refuse to permit the said petitioner to be landed from said steamship on the ground that said petitioner is a Chinese laborer, and is not entitled, under the provisions of the act of Congress aforesaid, to land, or be landed, in the United States.

That petitioner is subject to no restraint other than that he is not permitted to land in the United States.

That the master of said vessel is now and at all times has been ready and willing that petitioner should land from said steamship, but only refrains from landing him through direction of the said collector, who is charged with the administration of said law, and who, under the provisions
15 of said law, refuses permission to petitioner to come within the United States.

That petitioner is at liberty to remain on board said vessel and with her return to his own country, or he can depart from said vessel without hindrance and go to any place he may desire outside of the United States.

Wherefore intervener prays that the writ in this case may be dismissed and that no further proceedings be had under said petition for the following reasons:

That petitioner is not entitled to the benefit of the writ of habeas corpus for the reason that he is not imprisoned, detained, confined, or restrained of his liberty in manner and form as contemplated by the laws of the United States respecting habeas corpus proceedings.

That the facts are not sufficient to warrant the issue of the writ, and the same ought to be dismissed.

16 2d. That this court has no jurisdiction to issue the writ in this case, or to consider the facts relating to the same, because the collector of the port of San Francisco has fully considered the same and has given judgment therein, and the same is res adjudicata.

That the issues involved in this proceeding do not "constitute a case in law or equity" arising under the laws of the United States, or under a treaty with a foreign country, made by the United States, but are matters arising in the execution of a treaty and in the enforcement of a law enacted to carry out a treaty, and therefore come within the exclusive jurisdiction of the executive department of the Government of the United States. This case arises in an attempt to execute a treaty made by the Government of the United States with China. In that treaty it is stipulated "that whenever the Government of the United States
17 shall adopt legislative measures in accordance therewith, such measures will be communicated to the Government of China. If the measures as enacted are found to work hardship upon the subjects of China, the Chinese minister at Washington may bring the matter to the notice of the Secretary of State of the United States, who will consider the subject with him." This plan, so provided in the treaty itself for its ex-

ecution, nowhere contemplates the interference of any other department of the Government than the executive.

That under the act of Congress entitled "An act to execute certain treaty stipulations relating to Chinese," the duty of executing the treaty was vested in certain officers of the executive department of the Government, and the acts and decisions of those officers cannot be reviewed or set aside by the court.

S. G. HILBORN,
United States Attorney.

18 (Endorsed:) Filed October 12th, 1885. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

To which said intervention and plea counsel for petitioner filed a demurrer, which is in the words and figures following, to wit:

Bill of exceptions.

UNITED STATES OF AMERICA,
District of California:

In the district court of the United States in and for the district of California.

In re Jung Ah Lung on habeas corpus, No. 2749.

Demurrer to intervention and plea.

To the honorable Ogden Hoffman, judge:

Now come Gibson and Flournoy, attorneys for Jung Ah Lung, and demurring to the intervention on behalf of the United States filed by S. G. Hilborn, esq., United States district attorney, and admitting
19 the facts set forth in said intervention as true, yet state that they are insufficient in law to sustain the prayer thereof on the following grounds:

Ist. That said intervention does not state facts sufficient to show that the applicant is not entitled to the writ of habeas corpus.

IId. That said intervention does not state facts sufficient to show either a want of jurisdiction of this court or a bar to an enquiry by this court into the facts of the case as alleged in the petition, or that the question involved herein is res adjudicta.

3rd. That said intervention does not show in what manner the collector of the port of San Francisco is constituted a tribunal for the final determination of the question arising from the facts stated in the petition filed herein.

20 4th. That said intervention plainly shows that E. C. Reed, the master of the steamer San Pablo, has imprisoned, restrained, and detained and still imprisons, restrains, and detains said Jung Ah Lung, contrary to the laws of the United States, and the treaty regulations existing between the United States and the Empire of China.

GIBSON AND FLOURNOY
Attorneys for Applicant.

(Endorsed:) Filed October 12th, 1885. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

The above-entitled matter coming on to be heard before said district court upon the special intervention and plea and demurrer thereto, and the same having been argued and submitted to the court, the said demurrer was sustained and said plea to the jurisdiction overruled; to which
21 said ruling and decision of the court the United States, by its said attorney, S. G. Hilborn, esq., then and there duly excepted.

Thereupon the United States, by an order of said district court, was granted leave to file an intervention to the merits, which said intervention was then and there, on said 12th day of October, A. D. 1885, duly filed, and is in the words and figures following, to wit:

United States district court, district of California.

In re Jung Ah Lung on habeas corpus, No. 3749.

Intervention.

To the honorable Ogden Hoffman, district judge:

And now comes S. G. Hilborn, United States attorney for the district of California, and asks for leave to intervene for and in behalf of
22 the United States in the matter of the application made on behalf of said Jung Ah Lung for a writ of habeas corpus, and respectfully makes opposition to the said writ, and for grounds of intervention states as follows: That, as he is informed and believes, the said person in whose behalf said application was made has been and now is lawfully refused permission to land in the United States by the master of the steamship San Pablo, now in the port of San Francisco, district of California, in compliance with the provisions of an act of Congress of the United States, entitled "An act to execute certain treaty stipulations relating to Chinese," approved May 6th, 1882, and the act amendatory thereof approved July 5th, 1884, for the following reasons:

First. That the said person in whose behalf said application was made is by race, language, color, and dress, a Chinese person and a laborer by occupation, and has never been, previous to the filing of said ap-
23 plication, in the United States, as the said intervenor is advised and believes.

Second. That the said person in whose behalf said application was made arrived at the port of San Francisco, as a passenger on said vessel, from Hong-Kong, a foreign port or place in the Empire of China, and has failed to produce to the collector of customs for the port of San Francisco, California, or to any other officer authorized by law, the certificate of identification by said acts of Congress provided, and which is furnished to the Chinese laborer departing from the United States, by the custom-house officers of the port of his departure.

Third. Intervenor denies, upon information and belief, that the said person in whose behalf said application was made is entitled to land in the United States, as is alleged in said application, or otherwise.

24 Wherefore the said United States attorney asks that a judgment and order of this honorable court be made and entered in accordance with the allegations herein contained, and directing that the said Jung Ah Lung be detained on board of said vessel until released as pro-

vided by law, or otherwise to be returned to the country from whence he came, and that such further order be made as to the court may seem proper and legal in the premises.

S. G. HILBORN,
United States Attorney.

[Endorsed.]

Filed October 12th, 1885.

SOUTHARD HOFFMAN, *Clerk*,
By A. D. GREENWOOD,
Deputy Clerk.

25 UNITED STATES OF AMERICA.

In the district court of the United States in and for the district of California.

In re Jung Ah Lung, on habeas corpus. No. 3749.

Bill of exceptions.

Present, honorable Ogden Hoffman, judge.

This cause having regularly come on to be heard, on this the fifth day of November, A. D. 1885, William F. Gibson, esq., appeared as attorney for the applicant herein, and S. G. Hilborn, esq., United States district attorney, appeared on behalf of the United States as intervenor.

Counsel for the applicant, on behalf of his client, offered to prove that Jung Ah Lung, the applicant herein, is a Chinese laborer and was a resident of the United States at the date of the last treaty between the
26 United States and the Empire of China, November 17, A. D. 1880, and resided in the United States continuously until on or about the 24th day of October, A. D. 1883, when applicant, being about to return to China, applied to the collector of customs for the district of San Francisco for a certificate, enabling him to re-enter the United States in conformity to the provisions of a certain act of Congress, entitled "An act to execute certain treaty stipulations relating to Chinese," approved May 6th, 1882.

That said collector of customs did, on or about the 24th day of October, A. D. 1883, on board the steamer Rio de Janeiro, issue to said applicant a certificate in conformity to the provisions of said act of Congress; that the applicant departed forthwith on the said Rio de Janeiro for China taking said certificate with him; that he remained in China until he embarked for the port of San Francisco on or about the 25' day of
27 August, A. D. 1885; that previous to his embarkation for the United States, during the month of June, A. D. 1885, while travelling by water from his native village to Canton, the vessel on which said applicant was a passenger was attacked by pirates in waters that are notoriously infested with piratical craft; that said pirates deprived said applicant of his trunk, clothing, and valuables, and the said certificate entitling him to re-enter the United States was in his trunk, and he has never seen the trunk or certificate since; that the books in the registration office of the custom-house of San Francisco show that a certificate, num-

bered 11696, was issued to one Jung Ah Lung; aged 26 years; a laborer; resident of New York; height, 5 feet 5⅜ inches; complexion, light brown; color of eyes, black; scar above left eyebrow, also on left arm; first arrived in this country in 1875; sailed in the Rio de Janeiro October
28 24th, A. D. 1883; that no one has presented said certificate at this port, and no one has entered upon it, and said certificate is uncancelled.

That Jung Ah Lung, the party on whose behalf the petition herein was filed, is the Jung Ah Lung to whom said certificate was issued by the collector of customs for the district of San Francisco on the 24th day of October, A. D. 1883, and conforms in every particular with the description kept in the registration office of said custom-house to Jung Ah Lung, to whom said certificate was issued as aforesaid.

To the introduction of which testimony and all and every part thereof the district attorney objected on the ground that said testimony and all of it is incompetent and inadmissable, and on the ground that the law known as the Chinese restriction act provided that the certificate issued by
29 the collector of the district to a Chinese laborer departing from the United States shall be the only evidence permissible to establish the right of such Chinese laborer to re-enter the United States, and that no secondary evidence of the loss and contents of such certificate can be received.

Which objection was overruled by the court; to which ruling the district attorney then and there duly excepted.

30 *Testimony in the cause.*

In the United States district court in and for the district of California.

The Hon. Ogden Hoffman, judge.

In the matter of the habeas corpus of Jung Ah Lung, No. 3749.

Bill of exceptions.—Testimony of Jung Ah Lung.

JUNG AH LUNG, called for the petitioner, sworn.

Mr. GIBSON:

Q. Do you speak English well enough to go on without an interpreter?
A. I guess I speak good enough.
Q. How old are you?
A. I am 28.

Mr. GIBSON. Our case is this: That this person had a certificate and left this country two years ago in October, and return' to China. On
31 the way to Canton, embarking to this country, he was attacked by river pirates, or whatever they are called, and they deprived him of his certificate to come on here. We have testimony of persons here who knew him. I believe that his statement of the facts of his losing the certificate should be taken as evidence of that fact.

The COURT. Is that all you have now to offer?

Mr. GIBSON. That is all. We have an affidavit of a gentleman in Canton that he swore to before the United States consul in reference to what he knew about these facts.

Testimony of J. E. Kip.

J. E. KIP, called for the petitioner, sworn.

Mr. HILBORN. It having been announced that this party departed from the country with his certificate and returns here without one, and proposes to prove his right to land by other evidence than the certificate itself, I interpose a general objection that the statute has made the certificate
32 the only evidence of the right of the party to land.

Mr. GIBSON (to the witness). What is your official position?

A. I am Chinese interpreter in the registration office.

Q. How long have you occupied that position?

A. About two years and a half.

Q. In the registration office of the custom-house of this city?

A. Yes.

Q. Were you acting in that capacity in October, 1883?

A. I was.

Q. Did one Jung Ah Lung obtain a certificate about that time?

A. Allow me first to refer to the number. Yes.

Q. Please give the date.

A. A few days before October 24, 1883. Jung Ah Lung; age, 26 years old; a laborer; residence, New York; height, 5 feet $3\frac{3}{8}$; complexion, light brown; color of eyes, black; physical marks, scar above
33 left eye-brow, also left forearm. He first arrived in this country in 1875; sailed in the Rio de Janeiro October 24, 1883; has not returned.

The COURT. That certificate has not been presented?

A. It has not been presented on the steamer, and that party did have his certificate to go away, or some man did.

Q. You have read this data from the minutes in your office.

A. I have read this data from the register book of that office.

Q. The custom-house at the port of San Francisco?

A. Yes.

Q. On the faith of that certificate that entry was made out?

A. This is a record precisely, or almost, the same as the certificate, excepting in a few instances, such as, "the last time you were in this country."

Cross-examination by Mr. HILBORN:

34 Q. Is it perfectly certain that a red certificate was issued to that person?

A. So the book says.

Q. Was it the custom at that time to require the party to sign his name?

A. No, sir.

Q. No signature is preserved there?

A. No.

The COURT. Look at this man, Mr. Kip, and see if you have any doubt as to the identity of this man with the man of whom the description is taken.

A. I could not say. He corresponds; that is all I can say; the age and height, and all correspond.

Testimony of Jung Ah Lung.

JUNG AH LUNG, recalled.

Mr. GIBSON. Ask him when he first came to the country?

A. I first came to this country in 1876.

Q. Where did you come from?

A. China.

Q. How long did you stay in San Francisco?

A. Two years.

35 Q. Then where did you go?

A. To New York.

Q. When did you return to China?

A. 1883.

Q. When did you start to return from China to come to this country?

A. Now?

Q. Yes, this last time.

A. Two months ago.

Q. Did you have your certificate when you left your home?

A. Yes.

Q. State how it was you lost your certificate.

A. By some pirates.

Q. Tell the story to the court.

A. The first thing I take the ship from my village to Canton to my friend.

Q. What is the name of your village?

A. Quon Woon.

Q. What district is it in?

A. In the district of Sun Woi. I took the ship from my country, and then to Kong Mung, where robbers were, and they took all my

17 and money, and everything.

Q. Is Kong Mung before you get to Canton?

A. I did not get to Canton. I cannot get to Canton, because I get robbed; I have to return back for some clothes and go to Canton again.

Q. How far is Kong Mung from the place where you live?

A. From the robbers; from the pirates?

Q. Yes.

A. I guess about 5 miles.

Q. Five miles from the place where you live?

A. Yes.

Q. Who was with you when you were robbed by these pirates?

A. My cousin, and many people in that ship.

Q. How many were on that vessel?

A. I do not know, I cannot count them all; a good many.

Q. How many should you think?

A. 70, 80, or 100.

Q. Were you robbed at night or in the daytime?

37 A. In the morning.

Q. By whom?

A. By the pirates.

Q. Did you have your certificate with you?

A. Yes; I had my certificate with me at that time, in my trunk, and the robbers took it away, and they would not let me say anything at all. If I say something they will kill me.

Cross-examined by Mr. HILBORN:

Q. You started from your home to go to Hong-Kong, did you?

A. Yes; at that time I wished to go from my village to Canton and take the steamer to Hong-Kong.

Q. But you were going to Hong-Kong?

A. Yes.

Q. What were you going to Hong-Kong for?

A. For America.

Q. Were you going there to take the steamer to come to America?

A. Yes.

38 Q. In order to go to Hong-Kong by the route you selected you took in Canton?

A. Yes.

Q. What kind of a vessel was this you were on at the time you were assaulted by the pirates?

A. I do not know what you call it. You have not one here.

Q. Is it a sailing vessel?

A. Yes, but not very big.

Q. How far is it from your village up to Canton?

A. About 25 miles. I cannot tell just exactly.

Q. What is the water there; is it the ocean or a river?

A. A river.

Q. How wide is the river?

A. Not very wide; not as wide as this room.

Q. How many passengers or people were there on board this junk at the time the pirates came?

A. I cannot count them all; I guess about 70 or 80.

Q. Did they all get robbed?

A. Yes.

39 Q. And all lost their certificates?

A. Many do not go to America, but had some business in some way, and were going to Canton.

Q. I understood you to say you were five miles out from your village at the time you met these pirates?

A. Yes.

Q. Then you returned back?

A. Yes, to get some clothes.

Q. You took a new start?

A. Yes.

Q. When you started again did you go by the Canton route or right to Hong-Kong?

A. After a few days I went to Canton again to my pastor, Mr. Bone, and told him about these things, and he go with me to the American consul.

Q. What do you mean by the term "pastor?" Is that a clerical term?

A. He is a preacher; a minister.

Q. Minister of what church.

A. The Methodist Church?

40 Q. Have you ever seen your certificate since?
A. I cannot see it again, because it is gone away.
Q. You have never seen this certificate, then, since you met these pirates?
A. No.
Q. What did you do in New York?
A. Laundry.
Q. On what street?
A. 2nd avenue.
Q. What number?
A. 1391, between 72 and 73.
Q. How long did you conduct a laundry there?
A. Almost 5 years.
Q. When you went back to China you went from this port?
A. Yes.
Q. Did you pay any dues to any of the Chinese companies?
A. No; because I belong to the mission, and I need not pay any.
Q. The people who belong to the church do not pay any dues?
A. No.
41 Q. Did you send home any money?
A. Yes; by the Shanghai and Hong-Kong Bank.
Q. How much did you send?
A. $2,000.
Q. Did you get a draft?
A. No; exchange.
Q. On what bank?
A. Shanghai and Hong-Kong Bank.
Q. You bought a draft for $2,000 on the Shanghai and Hong-Kong Bank here?
A. Yes.
Q. Where was it payable?
A. I paid it here and got it in Hong-Kong.
Q. Whereabouts in Hong-Kong; at what bank?
A. The same company.
Q. Whereabouts is the office of this bank here?
A. I do not remember now.
Q. Did you buy the draft yourself?
A. Yes.
Q. Do you know the names of any of the officers of that bank
42 here?
A. No.
The COURT. Could you find that bank? Could you go there?
A. Yes.
Mr. HILBORN. Did you buy that exchange here or in New York?
A. I carry it myself here in this city, and go to the Shanghai bank and exchange it to Hong-Kong.
The COURT. Then the books of that bank would show the purchase.
Mr. HILBORN. It seems to me he has been here before, but the question will be whether he can come in without his certificate.
The COURT. The fact that he took $2,000 away with him could be shown.

Mr. GIBSON. We have here an affidavit made by Mr. Bone, in
43 China, in reference to what he heard about these facts, and we would like to offer that as evidence.

The COURT. It is obviously inadmissible, but you may read it subject to objection.

Mr. HILBORN. It is understood that my objection runs all through?

The COURT. Yes.

Mr. GIBSON. I will read this affidavit. [Reads affidavit, which is marked Exhibit I.]

Testimony of Fred'k James Masters.

Frederick James Masters called for the petitioner; sworn.

Mr. GIBSON. Q. You are a clergyman of the Wesleyan Church?

A. Formerly of the Wesleyan Church; now of the Methodist Episcopal Church of the United States.

44 Q. You are in charge of Dr. Gibson's mission?

A. Yes.

Q. Did you formerly reside in China?

A. Yes.

Q. For how long?

A. 9 years.

Q. When did you leave?

A. I left on the 14th of December, 1883?

Q. What were you engaged in in China?

A. Missionary works.

Q. Did you know the Rev. Charles Bone?

A. Quite well.

Q. What was his business?

A. Also a missionary, belonging to the society under the auspices of which I went to China.

Q. Where was he stationed?

A. In Canton.

Q. Would you know his writing and signature?

A. I am in constant correspondence with him and know it quite well.

45 Q. Will you look at that document and state if you recognize his signature?

[Handing affidavit to the witness.]

A. I do.

Mr. GIBSON. We would like to offer that now.

Mr. HILBORN. I do not object to the form of it. I object to it on the ground that it is not the kind of testimony to prove this man's right to land.

Mr. GIBSON. Do you know Jung Ah Lung?

A. I know him by sight, but I did not know his name was Lung. I knew his surname was Jung. I did not know his name was Lung until I saw him the other day. I met him in China.

Q. How long ago?

A. About November or December, 1883.

Q. Where did you meet him?

A. In Canton.

The COURT. Is he a convert?

A. He was a convert.

46 Mr. GIBSON. Do you know where he resided in China?

A. In my district of San Hi.

Q. How far from Canton is that?

A. That would be about 60 miles.

The COURT. Does the story related by this man as to the loss of the paper on account of the pirates seem to you to be improbable?

A. It seems very probable. I know the district quite well, and was myself attacked in a boat at the very place where this took place. My boat was attacked and broken into.

Q. How long ago was that?

A. That would be about six years ago. It is a notoriously piratical place.

Mr. GIBSON. Are you the successor of Mr. Gibson in the Chinese mission?

A. Yes.

Q. Have you charge of the church records at the present time?

A. I am.

47 Q. Do you know of any person in that mission by the name of Jung Ah Lung?

A. Yes.

Q. Will you read what the register states concerning him?

A. "No. thirty-three; state of life. Blank. When received, November 28, 1876." "When received" means when received into the church. "How received; by letter from churches. By whom received, Otis Gibson."

Q. You stated you knew this Jung Ah Lung in China; did you know anything as to his character?

A. I knew he was in good standing in connection with the English Wesleyan Church in the province of Canton.

Q. From what you knew of him is he a person whose word should be believed?

A. I think so.

Testimony of H. W. Stow.

H. W. STOW, called for the petitioner, sworn:

Mr. GIBSON. Q. Where do you reside, in this city?

48 A. No.

Q. Where do you reside?

A. East Oakland.

Q. What is your business?

A. I am the business manager of the Herald of Holiness.

Q. What was your business 8 years ago?

A. I was working in the Chinese mission as teacher under Dr. Gibson.

Q. How long were you there in that capacity?

A. About 8 years.

Q. Were you there in 1876?

A. Yes.

Q. Did you have a scholar name Jung Ah Lung?

A. I don't remember having him on the books at the mission house. I had a little school of my own at 620 Jackson street, and on that book is found one of these parties, but not the other.

Q. Have you got your book here?

A. Yes.

49 Q. Will you refer to the book and find out? Do you find the name of Jung Ah Lung in that book?

A. Jung Ah Lung is not here.

Q. Do you know Jung Ah Lung?

A. I do.

Q. Where did you know him?

A. At this mission on Jackson street, and also at the mission on Washington street. Being a member of the church there I used to be with him every Sunday.

Q. How long did you know him?

A. I do not know, he was not here very long.

Q. Did you know where he went?

A. No; I would not swear where he went to from here.

Q. Do you know him?

A. Yes.

Q. Point him out.

A. That is he [pointing to Jung Ah Lung]. I know him well.

The COURT. Is he a worthy man, of good character?

50 A. I should judge he was. While I knew him in the church he was always faithful.

Mr. GIBSON. From what you know of him, do you think his word would be entitled to belief?

A. I would, most assuredly.

Mr. GIBSON. That is our case.

Mr. HILBORN. I object to this man landing. The statute says the certificate is the only evidence, and he does not produce the certificate.

51 EXHIBIT I.—*Bill of exceptions. Affidavit of C. Bone.*

CANTON, *July 11th*, 1885.

The bearer of this, Chung Ah Lung, was a resident in the United States of America from the year 1876 until the year 1883, when he returned to China, provided (as he says, and I have other documents that prove him to have been in the United States, though I never saw the passport) with a passport to return on June 20th, 1885; he embarked on board a native boat with all his possessions to proceed to Hong-Kong, when native pirates set upon the boat and robbed all the passengers of everything they possessed. He being among the number lost his property, and his documents being among the property in the boat lost them. He was proceeding to Hong-Kong to re-embark for America. He has been under my observation since he came back, and has married a

52 girl from my own mission school, and I believe I may place confidence in what he has said.

Previous to his return to China for some time he had lived in New York, 1391 Second avenue, and was engaged in a laundry. His age is 28 years. He can be identified by the photograph affixed underneath.

[U. S. CONSULATE SEAL.] C. BONE,

English Wesleyan Mission, Canton, China.

Certificate of Chas. Seymond, U. S. Consul.

UNITED STATES CONSULATE,
Canton, China, July 11th, 1885.

To whom it may concern:

This is to certify that the Reverend Charles Bone, who signed the affixed statement in my presence in regard to Chung Ah Lung, is well known to me as one of the honored clergymen of the English Wesleyan Mission at Canton and in Southern China, and that he brought Chung Ah Lung
53 to this consulate for examination and identification. The statement of Reverend Charles Bone should be good without any official acknowledgment or verification; but at the suggestion of the agent of the steamship company, the said Bone was duly sworn and made oath to the truth of the statement made by him in regard to Chung Ah Lung.

[U. S. CONSULATE SEAL.] CHARLES SEYMOND,
United States Consul at Canton.

Filed in U. S. district court, dist. of Cal., September 29th, 1885.
SOUTHARD HOFFMAN,
Clerk,
By A. D. GRIMWOOD,
Deputy Clerk.

54 In the district court of the United States in and for the district of California.

In re Jung Ah Lung on habeas corpus, No. 3749.

Findings.

The above-entitled action came regularly on for hearing on the fifth day of November, A. D. 1885, before this court, William F. Gibson appearing as attorney for applicant, and S. G. Hilborn, United States district attorney, for the United States, as intervenor.

Counsel for applicant proceeded to introduce testimony by which it appeared to the satisfaction of this court, and this court so finds:

That Jung Ah Lung is a Chinese laborer, being one of the proprietors of a laundry situated at No. 1391 Second avenue, New York City;
55 that he was a resident of the United States on the 17th day of November, A. D. 1880, the date of the last treaty between the United States and the Empire of China, and that he resided continuously in the United States until on or about the 24th day of October, A. D. 1883, when he sailed for China on the steamer Rio de Janeiro; that before sailing for China he duly applied for and received from the collector of customs for the district of San Francisco a certificate of identification, stating his name, age, occupation, last place of residence, physical marks and peculiarities, and all facts necessary for his identification in conformity to the act of Congress entitled "An act to execute certain treaty stipulations relating to Chinese," approved May 6th, 1882; that he departed on said steamer for China, having in his possession and taking away with him the said certificate; that during the month of June, A. D. 1885, while
56 on a voyage from his native village to the city of Canton, China, the junk upon which he was a passenger was attacked by pirates

in waters notoriously infested with piratical craft, who deprived said Jung Ah Lung of said certificate entitling said applicant to re-enter the United States; that no one has presented said certificate at this port, and said certificate is outstanding and remains uncancelled on the books of the custom-house for the district of San Francisco.

That the applicant corresponds in all respects to the description contained in the registration books of the custom-house of the person to whom the said certificate was issued, and that no doubt can be entertained that the applicant is the person to whom the said certificate was issued and delivered; that it was not suggested by the district attorney, nor contended by him, that the proof, if admissible, failed to establish in the most
57 satisfactory manner the facts herein found by the court; and he claimed that the applicant should be remanded solely on the ground that the testimony offered by the applicant could not, under the provisions of the acts of Congress known as the restriction act, be received in evidence.

Whereupon, the court being of opinion that the said proofs were admissible and fully established the facts as claimed by the applicant, ordered that he be discharged.

OGDEN HOFFMAN,
Dist. Judge.

(Endorsed:) Filed November 5, A. D. 1885. Southard Hoffman, clerk, by A. D. Greenwood, deputy clerk.

58 *Bill of exceptions. Exception to findings.*

To which order the district attorney then and there duly excepted on the grounds:

1st. That the court had no authority or jurisdiction to issue a writ in this case as the applicant was not restrained of his liberty within the true intent and meaning of the act of Congress known as the habeas corpus act.

2nd. That the court on the return of said writ of habeas corpus had no authority or jurisdiction to inquire into and decide upon the lawfulness of said alleged restraint, for the reason that the same had been decided to be lawful by the collector of the port of San Francisco, or his deputy.

3rd. For the reason hereinbefore set forth the said testimony as to the issuance, loss, and contents of the certificate mentioned aforesaid, and the evidence of the fact that the applicant is the identical person to
59 whom said certificate was issued is inadmissible under the provisions of the said restriction acts, and that the applicant having failed to produce his certificate, is not now entitled to enter the United States.

60 *Bill of exceptions. Order of discharge.*

In the district court of the United States, district of California.

In the matter of Jung Ah Lung on habeas corpus, No. 3749.

This matter having been regularly brought on for hearing upon the issues joined, and the same having been duly heard and submitted, and due consideration having been thereon had, it is by the court now here ordered

that Jung Ah Lung, in whose behalf the writ of habeas corpus herein was sued out, is illegally restrained of his liberty, as alleged in the petition herein, and that he be, and he is hereby, discharged from the custody from which he has been produced, and that he go hence without day.

Entered this 5th day of November, 1885.

SOUTHARD HOFFMAN,
Clerk,
By A. D. GRIMWOOD,
Deputy Clerk.

61 (Endorsed:) No. 3749. United States district court, district of California. In re Jung Ah Lung on habeas corpus. Order of discharge. Filed November 5, 1885. Southard Hoffman, clerk U. S. district court, by A. D. Grimwood, deputy clerk.

62 At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Friday, the 6th day of November, in the year of our Lord one thousand eight hundred and eighty-five.

Present, the honorable Ogden Hoffman, judge.

In re Jung Ah Lung on habeas corpus.

Bill of exceptions. Order allowing appeal.

On motion of Mr. Hilborn, U. S. attorney, on behalf of the United States, intervenor, it is ordered that an appeal be, and the same is hereby, granted to the intervenor herein to the circuit court of the United States for the ninth circuit and district of California from the order of this court, heretofore made and entered herein on the 5th day of November, 1885, discharging the said Jung Ah Lung.

63 In testimony whereof and for the purpose of authenticating the truth of the several matters in this bill of exceptions contained, I, Ogden Hoffman, U. S. district judge for the district of California, before whom said matter was heard and to whom this bill of exceptions was proffered for seal and signature in due time, have, at the request of said S. G. Hilborn, esq., United States attorney for the district of California, signed and sealed the same, making it a part of the record in the above-entitled matter, this 20th day of November, A. D. 1885.

OGDEN HOFFMAN, [SEAL.]
United States District Judge, District of California.

(Endorsed:) Filed November 20, 1885. Southard Hoffman, clerk.

64 In the district court of the United States in and for the district of California.

In re Jung Ah Lung on habeas corpus, No. 3749.

Notice of appeal.

To William F. Gibson, esq., attorney for petitioner, and the clerk of the above-named court:

You are hereby notified that the United States hereby appeals to the United States circuit court, of the ninth circuit, for the district of California,

from the judgment and order heretofore made and entered by the above-named district court in the above-entitled matter, discharging said Jung Ah Lung from the custody from whence he was taken, and from the whole and every part of said order and judgment and the several rulings of the court objected to by the United States on the hearing and
65 trial of said cause, especially the order sustaining the demurrer of petitioner to the special intervention and plea to the jurisdiction interposed by the United States and the rulings of the court admitting other testimony than the certificate to establish the right of the petitioner to come into the United States.

S. G. HILBORN,
United States Attorney.

I hereby admit service of within and a receipt of a copy thereof this 20th day of November, 1885.

WILLIAM F. GIBSON,
Attorney for Petitioner.

(Endorsed:) Filed November 21st, 1885. Southard Hoffman, clerk.

66 UNITED STATES OF AMERICA,
DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

Clerk's certificate.

I, Southard Hoffman, clerk of the district court of the United States for the district of California, do hereby certify the foregoing and hereunto annexed thirty-eight pages, numbered from 1 to thirty-eight, respectively, constitute the transcript on appeal from said district court to the circuit court of the United States for the ninth circuit and district of California in the matter of Jung Ah Lung, No. 3749, on habeas corpus.

In witness whereof I have hereunto set my hand and affixed the seal of said district court at San Francisco, in said district, this 21st day of November, 1885.

[SEAL.] SOUTHARD HOFFMAN,
Clerk of U. S. District Court, District of California.

67 (Endorsed:) Transcript on appeal. Filed November 21, 1885 L. S. B. Sawyer, clerk.

68 At a stated term, to wit, the November term, A. D. 1885, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room, in the city and county of San Francisco, on Saturday, the 19th day of December, in the year of our Lord one thousand eight hundred and eighty-five.

Present, the honorable Lorenzo Sawyer, circuit judge.

In the matter of Jung Ah Lung on habeas corpus, No. 3910.

Order affirming judgment of U. S. district court and allowing an appeal.

This matter came on this day to be heard upon the appeal from the judgment of the district court of the United States for the district of Cal-

ifornia, S. G. Hilborn, esq., U. S. attorney, appearing for the United States intervenor and appellant herein, and W. F. Gibson, esq., for the petitioner and appellee, and was argued by the respective counsel,
69 and submitted to the court for consideration and decision. And the same having been duly considered, it is ordered that the judgment of the district court of the United States for the district of California be, and the same hereby is, affirmed, and that judgment be entered herein accordingly.

On motion of S. G. Hilborn, esq., U. S. attorney, it is ordered that an appeal from the order made and entered herein on the 19th day of December, A. D. 1885, being a day in the November, A. D. 1885, term of said circuit court, be, and the same hereby is, allowed, and that a certified transcript of the pleadings and proceedings be forthwith transmitted to the Supreme Court of the United States.

70 In the circuit court of the United States, district of California.

In the matter of Jung Ah Lung on habeas corpus, No. 3910.

Judgment.

This matter having been regularly brought on for hearing upon appeal from the judgment and order of the U. S. district court for said district of California, and the same having been duly heard and submitted, and due consideration having been therein had, it is by the court now here ordered that the judgment of the said district court be, and the same hereby is, affirmed; and it is further ordered that Jung Ah Lung, in whose behalf the writ of habeas herein was sued out, is illegally restrained of his liberty, as alleged in the petition herein, and that he be, and he is hereby, discharged from the custody from which he has been
71 produced, and that he go hence without day.

Entered this 19th day of December, 1885.

L. S. B. SAWYER, *Clerk.*

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify the foregoing to be a copy of the order of discharge entered in the above-entitled matter.

Attest my hand and seal of said circuit court this nineteenth day of December, A. D. 1885.

L. S. B. SAWYER, *Clerk.*

(Endorsed:) Filed December 19, 1885. L. S. B. Sawyer, clerk.

72 UNITED STATES OF AMERICA.

Circuit court of the United States, ninth district of California.

In the matter of Jung Ah Lung on habeas corpus, No. 3910.

Clerk's certificate.

I, Lorenzo S. B Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, within and for the district of California,

do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the therein entitled action.

Witness my hand and the seal of said circuit court this 19th day of December, A. D. 1885.

[SEAL.]

L. S. B. SAWYER,
Clerk,
By F. D. MONCTON,
Deputy Clerk.

(Endorsed:) Judgment roll. Filed December 19th, 1885. L. S. B. Sawyer, clerk. By F. D. Moncton, deputy clerk.

73 In the circuit court of the United States for the district of California.

In the matter of Jung Ah Lung on habeas corpus. No. 3910.

I, L. S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in and for the district of California, do hereby certify that the foregoing seventy-two written pages, numbered from 1 to 72, inclusive, are a full, true, and correct copy of the record and of all proceedings in the therein-entitled matter, and that the same together constitute the transcript on appeal herein.

Witness my hand and the seal of said circuit court this 31st day of December, A. D. 1885.

[SEAL.] L. S. B. SAWYER, *Clerk.*

74 UNITED STATES OF AMERICA, *ss:*

To Jung Ah Lung, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 25th day of January, A. D. 1886, pursuant to an order allowing an appeal from the order made and entered by the circuit court of the United States in and for the district of California, on the nineteenth day of December, A. D. 1885, affirming the judgment of the district court of the United States for the district of California in the matter of Jung Ah Lung on habeas corpus, wherein the United States of America is intervenor and appellant and you are appellee, to show cause, if any there be, why the said order of the 19th day of December, A. D. 1885, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Lorenzo Sawyer, judge of the circuit court of the United States of the ninth judicial circuit in and for the district of California, this 21st day of December, A. D. 1885, and of the Independence of the United States, the one hundred and tenth.

[SEAL.] LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

(Indorsed:) No. 3910. In the Supreme Court of the United States. In the matter of Jung Ah Lung on habeas corpus. Citation. Service

of the within citation by copy of same as hereby admitted, this 30 day of December, 1885. Gibson & Flournoy, att'ys for ap'ellee. Filed December 31, 1885. L. S. B. Sawyer, clerk U. S. circuit court, 9th circuit, by J. D. Moulton, deputy clerk.

(Indorsed on cover:) No. 1248. The United States, appellant, vs. Jung Ah Lung. California C. C. U. S. Filed January 13, 1886.

124-621

JAN 4 1888

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
vs.
JUNG AH LUNG.
No. 491.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA (SAN FRANCISCO).

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
vs.
JUNG AH LUNG. } No. 491.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA (SAN FRANCISCO).

BRIEF ON THE PART OF THE APPELLANT.

In September, 1885, Jung Ah Lung sued out a writ of habeas corpus before the United States district court at San Francisco, to discharge him from imprisonment, as alleged, by E. C. Reed, master of the steamship *San Pablo*, claiming, in his petition, that he did not come within the restrictions of the act of Congress of the 6th of May, 1882, entitled "An act to execute certain treaty stipulations relating to the Chinese." (See 22 Stat. L., chap. 126, p. 58.) The United States intervened in the district court and resisted the granting of the prayer of the petition (Rec., p. 4 *et seq.*). A demurrer was inter-

posed to this intervention, which was sustained, and on leave granted, the United States intervened on the merits (Rec., pp. 6–7). A trial was had upon testimony, and the court found that the facts were established as claimed by the applicant, and he was ordered to be discharged (Rec., pp. 7–18). To this finding and judgment of the court the United States excepted and appealed to the circuit court, where the judgment of the district court was affirmed, and from that judgment of affirmance an appeal was taken to this court (Rec., pp. 20–21). In order to a thorough comprehension of the case, the special findings of the district judge, which were affirmed by the circuit court, are here set out:

> The above-entitled cause came regularly on for hearing on the fifth day of November, A. D. 1885, before this court, William F. Gibson appearing as attorney for applicant, and S. G. Hilborn, United States district attorney, for the United States, as intervenor.
>
> Counsel for applicant proceeded to introduce testimony by which it appears to the satisfaction of this court, and this court so finds:
>
> That Jung Ah Lung is a Chinese laborer, being one of the proprietors of a laundry situated at No. 1391 Second avenue, New York City; that he was a resident of the United States on the 17th day of November, A. D. 1880, the date of the last treaty between the United States and the Empire of China, and that he resided continuously in the United States until on or about the 24th day of October, A. D. 1883, when he sailed for China on the steamer *Rio de Janeiro;* that before sailing for China he duly applied for and received from the collector of customs for the district of San Francisco a certificate

of identification, stating his name, age, occupation, last place of residence, physical marks and pecularities, and all facts necessary for his identification, in conformity to the act of Congress entitled "An act to execute certain treaty stipulations relating to Chinese," approved May 6, 1882; that he departed on said steamer for China, having in his possession and taking away with him the said certificate; that during the month of June, A. D. 1885, while on a voyage from his native village to the city of Canton, China, the junk upon which he was a passenger was attacked by pirates in waters notoriously infested with piratical crafts, who deprived said Jung Ah Lung of said certificate entitling said applicant to re-enter the United States; that no one has presented said certificate at this port, and said certificate is outstanding and remains uncanceled on the books of the custom-house for the district of San Francisco.

That the applicant corresponds in all respects to the description contained in the registration books of the custom-house of the person to whom the said certificate was issued, and that no doubt can be entertained that the applicant is the person to whom the said certificate was issued and delivered; that it was not suggested by the district attorney, nor contended by him, that the proof, if admissible, failed to establish in the most satisfactory manner the facts herein found by the court; and he claimed that the applicant should be remanded solely on the ground that the testimony offered by the applicant could not, under the provisions of the acts of Congress known as the Restriction Act, be received in evidence.

Whereupon the court, being of opinion that the said proofs were admissible and fully established the facts as claimed by the applicant, ordered that he be discharged. (Rec., pp. 17, 18).

ASSIGNMENT OF ERRORS.

For errors in this proceeding it is assigned:

(1) The circuit court erred in affirming the jurisdiction of the district court; for there was no jurisdiction in the district court to issue the writ in the first instance, as the party was not in restraint of his liberty within the true meaning and intent of the act of Congress known as the Habeas Corpus Act.

(2) The circuit court erred in holding that the district court could inquire into the matter on the return of the writ; for on the return of the writ of habeas corpus there was no authority or jurisdiction to inquire into and decide upon the lawfulness of said alleged restraint, because the same had been decided to be lawful by the collector of the port of San Francisco or his deputy.

(3) The circuit court erred in holding that the district court could hear any evidence without the certificate; for the applicant, having failed to produce his certificate under the act of Congress of the 6th of May, 1882, was not entitled to enter the United States.

(4) That the finding and judgment upon the hearing were for the applicant and against the United States, when they should have been in favor of the United States and against the applicant.

It would appear that the only measure of relief for this party, supposing he was aggrieved as alleged, must be found in the act of May 6, 1882, referred to, or the subsequent act amendatory thereof, of the 5th of July, 1884, because on the familiar principle that those acts undertaking to legislate upon the entire subject—and it may be safely asserted that they did do so within the scope of the

treaty between the United States and the Empire of [illegible] proclaimed October 5, 1881 (22 Stat. L., 826)—out of the great numbers, and remedies arising out of this tificate or some paper in writing, might be as difficult as identifying a certain one out of a flock of black birds. The power in the court to dispense with this absolute requirement of the law would enable it to nullify the law of liberty as is contemplated by the provisions of that Act. There is no pretense that the party is restrained except that he is not permitted to enter the United States. And if there were grounds to place the right under this act, this Chinese legislation takes them away, and regulates the whole subject-matter, and this legislation is necessarily exclusive. (*United States* v. *Tynen*, 11 Wall., 88; *Arnson* v. *Murphy*, 109 U. S., 243; *ib.*, 504, *Townsend* v. *Little;* Sedgwick Construction, 31, note *a;* Bishop Writ. L., § 249, *et seq.*)

This Chinese legislation confided to the collector of the port of San Francisco the authority to pass upon this question, and provided no means of review of his action in the premises. Upon the recognized principle that a special jurisdiction being given, the exercise of that jurisdiction is final, certainly the finding of the collector in this case can not be reviewed. (Freeman Judgments, § 531, note; *The People* v. *Collins*, 19 Wend., 56; *Allen* v. *Blunt*, 3 Story, C. C., 742; *Johnson* v. *Towsley*, 13 Wall., 83.)

The jurisdiction, by the very terms of the law giving it, carries finality in the exercise of it. Indeed the treaty itself contemplates only executive action in its enforcement and the laws made under it, and there is therefore no

"case in law or equity" for the courts to inquire into (22 Stat. L., *supra*), for the treaty says:

If the measures as enacted are assigned:

(1) The circuit court erred in affirming the jurisdiction of the district court; for there was no jurisdiction in the district court to issue the writ in the first instance, as the party was not in restraint of his liberty within the true

It is equally true that, because of the failure of the applicant to produce his certificate, he was not entitled to the relief prayed for. The certificate under the act referred to was essential and its production was essential, but he failed to produce it. As has been seen, this legislation intended to cover the whole subject, and it makes no provision for evidence sufficient to obtain the discharge without the production of this certificate. It may be a harsh and stringent law, but nevertheless it is the law, and it provides not for any secondary evidence in the premises; it makes no exceptions; and the law making no exceptions, the court can not make any (Sedgwick, *supra*, 360, note *a*; *Jones* v. *Smart*, 1 T. R., 44–52). "Courts can not supply omissions in legislation nor afford relief because they are supposed to exist" (*United States* v. *Union Pacific R. R.*, 91 U. S., 85). And upon the very state of facts appearing in the findings of the district judge (Rec., p. 17–18) upon this point, even if the petition be true, the party was not entitled to his discharge. It is nothing to the purpose, that the applicant corresponds in all respects, to the description contained in the registration books at the custom-house of the person to whom the certificate was issued, because the act does not say that on failure to produce the certificate this kind of evidence can be resorted to. And, after

all, the law, as stringent as it may appear in this respect, may be sufficiently wise; because identifying a Chinaman out of the great number that come and go, without a certificate or some paper in writing, might be as difficult as identifying a certain one out of a flock of black birds. The power in the court to dispense with this absolute requirement of the law would enable it to nullify the law entirely, and to discharge the party without any evidence.

In the amendatory act of 1884 such language as this runs all along: "*In each case to be evidenced by a certificate*," &c., "*and the names and other particulars, as shown by their certificates*," &c. It is perfectly clear, then, that a release on any evidence short of this is not provided for or contemplated by law. And it is to be observed this amendatory act, more stringent than the original act of May, 1882, was passed after time for experience and practice under the first act of two years or more. The evidence received at the trial without the certificate, whether under the original act or the amendment to it, was inadmissible.

Then it is submitted, upon the whole record, that Jung Ah Lung is not entitled to be discharged, and that the judgment of the court below should be reversed.

A. H. GARLAND,
Attorney-General.

124-62

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1248.

THE UNITED STATES,

APPELLANT,

vs.

JUNG AH LUNG,

RESPONDENT.

BRIEF OF RESPONDENT.

THOS. D. RIORDAN,

Attorney for Respondent.

FRANCIS, VALENTINE & CO., PRINTERS, SAN FRANCISCO, CAL.

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1248.

UNITED STATES,
Appellant,
vs.
JUNG AH LUNG,
Respondent.

STATEMENT OF THE CASE.

The respondent was a resident of the United States on November 17, 1880, the date of the last treaty between the United States and China, and resided continuously in the United States until on or about the 24th day of October, A. D. 1883, when he sailed for China on the steamship Rio de Janeiro. Before sailing for China, he duly applied for and received from the Collector of Customs for the District of San Francisco, a certificate of identification in due form, and containing all the requirements prescribed by Section 4, of the Chinese Restriction Act of May 6, 1882. He departed for China on said steamer, having in his possession and taking with him the said certificate. During the month of June, 1885, while on a voyage from his native vil-

lage to the city of Canton, China, the junk upon which he was a passenger was attacked by pirates, who deprived the respondent of his certificate. (Vide Findings, Trans., p. 17. Vide Testimony, Trans., pp. 11, 12, 13, 16, 17.)

On or about the 22d day of August, 1885, respondent embarked on board the steamship San Pablo at Hongkong, China, for the port of San Francisco, and arrived at said last named port on September 15, 1885. Immediately thereafter, said petitioner was examined by the Collector of said Port, who decided that said petitioner was not entitled to land, and thereupon the captain of said vessel, acting under the direction of said Collector, refused to permit said respondent to land at said port of San Francisco, and was about to and would have carried him out of the jurisdiction of the United States, unless restrained by a court from so doing. (Vide Intervention. Trans., pp. 4, 5. Vide Return Trans., p. 3.)

Thereafter, on the 28th day of September, 1885, respondent filed his petition in the United States District Court, District of California, setting forth that he was unlawfully imprisoned, detained, confined and restrained of his liberty by the master of the said steamship San Pablo, and praying that a writ of *habeas corpus* might be granted, directed to the said master. On said last named day the Hon. Ogden Hoffman, Judge of said District Court, ordered that said writ be issued, and thereupon the clerk of said Court issued said writ, and the master of said vessel produced said respondent in Court in obedience to the command of

said writ, and filed his return thereto, setting forth that he held said respondent in his custody by direction of the Customs authorities of the Port of San Francisco, under the provisions of the Chinese Restriction Act. (Vide Trans., pp. 1, 2, 3.)

To this petition the United States District Attorney filed a plea on behalf of the United States setting forth: 1st—That the petitioner was not entitled to the writ of *habeas corpus*, for the reason that he was not imprisoned, detained, confined or restrained of his liberty, as contemplated by the laws of the United States respecting *habeas corpus* proceedings. 2d—That the Court had no jurisdiction to issue the writ, because the Collector of the Port of San Francisco had fully considered the facts set forth in the said petition, and had given his judgment thereon, and the same was *res adjudicata*. 3d—That the facts set forth in said petition, viz., that said petitioner had procured the certificate required by law, but had lost the same, were not sufficient to warrant the issuance of the writ. (Vide Trans., pp. 4, 5.)

To this plea respondent demurred on the ground that said plea did not state facts sufficient to show that said applicant was not entitled to the writ of *habeas corpus*. After argument, the Court sustained the demurrer and overruled the plea. Thereafter, the said District Attorney filed an intervention or answer, denying the allegations of said petition, and upon the issue thus raised the case was tried, and on the 5th day of November, A. D. 1885, the said Court rendered judgment in favor of respondent, discharging him from the custody from which he had been produced. (Vide Trans., p. 18.)

Thereafter, the District Attorney, on behalf of the United States, appealed from said judgment to the United States Circuit Court for the District of California, and on the 19th day of December, 1885, the said Circuit Court rendered its judgment affirming the judgment of the District Court. From the said judgment of the Circuit Court the United States, through the District Attorney, has appealed to this Court.

The Restriction Act referred to is as follows:

AN ACT TO EXECUTE CERTAIN TREATY STIPULATIONS RELATING TO CHINESE, APPROVED MAY 6TH, 1882, AS AMENDED JULY 5TH, 1884.

Whereas in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territories thereof; Therefore:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SEC. 1. That from and after the expiration of ninety days next after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended; and during such suspension, it shall not be lawful for any Chinese laborer to come, or having so come, after the expiration of said ninety days, to remain within the United States.

SEC. 2. That the master of any vessel who shall knowingly bring within the United States on such vessel,

and land, or permit to be landed, any Chinese laborer, from any foreign port or place, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not more than five hundred dollars for each and every such Chinese laborer so brought, and may also be imprisoned for a term not exceeding one year.

SEC. 3. That the two foregoing sections shall not apply to Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of this act, and who shall produce to such master before going on board such vessel, and shall produce to the collector of the port in the United States at which such vessel shall arrive, the evidence hereinafter in this act required of his being one of the laborers in this section mentioned; nor shall the two foregoing sections apply to the case of any master whose vessel, being bound to a port not within the United States, shall come within the jurisdiction of the United States by reason of being in distress or in stress of weather, or touching at any port of the United States on its voyage to any foreign port or place; Provided: That all Chinese laborers brought on such vessel shall depart with the vessel on leaving port

SEC. 4. That for the purpose of properly identifying Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of

this act, and in order to furnish them with the proper evidence of their right to go from and come to the United States of their own free will and accord, as provided by the treaty between the United States and China, dated November seventeenth, eighteen hundred and eighty, the Collector of Customs of the district from which any such Chinese laborer shall depart from the United States shall, in person or by deputy, go on board each vessel having on board any such Chinese laborer, and cleared or about to sail from his district for a foreign port, and on such vessel make a list of all such Chinese laborers, which shall be entered in registry-books, to be kept for that purpose, in which shall be stated the name, age, occupation, last place of residence, physical marks or peculiarities, and all facts necessary for the identification of each of such Chinese laborers, which books shall be safely kept in the Custom House; and every such Chinese laborer so departing from the United States shall be entitled to and shall receive, free of any charge or cost upon application therefor, from the Collector, or his Deputy, at the time such list is taken, a certificate, signed by the Collector, or his Deputy, and attested by his seal of office, in such form as the Secretary of the Treasury shall prescribe, which certificate shall contain a statement of the name, age, occupation, last place of residence, personal description and facts of identification of the Chinese laborer to whom the certificate is issued, corresponding with the said list and registry in all particulars. In case any Chinese laborer, after having received such certificate, shall leave such vessel before her departure, he shall deliver his certificate to the

master of the vessel; and if such Chinese laborer shall fail to return to such vessel before her departure from port, the certificate shall be delivered by the master to the Collector of Customs for cancellation. The certificate herein provided for shall entitle the Chinese laborer to whom the same is issued, to return to and re-enter the United States, upon producing and delivering the same to the Collector of Customs of the District at which such Chinese laborer shall seek to re-enter, and upon the delivery of such certificate by such Chinese laborer to the Collector of Customs at the time of re-entry in the United States, said Collector shall cause the same to be filed in the Custom House and duly cancelled.

SEC. 5. That any Chinese laborer mentioned in section four of this act, being in the United States, and desiring to depart from the United States by land, shall have the right to demand and receive, free of charge or cost, a certificate of identification similar to that provided for in section four of this act to be issued to such Chinese laborers as may desire to leave the United States by water; and it is hereby made the duty of the Collector of Customs of the District next adjoining the foreign country to which said Chinese laborer desires to go to issue such certificate, free of charge or cost upon application by such Chinese laborer, and to enter the same upon registry books to be kept by him for the purpose, as provided for in section four of this act.

SEC. 6. That in order to the faithful execution of articles one and two of the treaty in this act, before

mentioned, every Chinese person, other than a laborer, who may be entitled by said treaty and this act to come within the United States, and who shall be about to come to the United States, shall be identified as so entitled by the Chinese Government in each case, such identity to be evidenced by a certificate, issued under the authority of said government, which certificate shall be in the English language, or if not in the English language, accompanied by a translation into English, stating such right to come, and which certificate shall state the name, title or official rank, if any, the age, height and all physical peculiarities, former and present occupation or profession, and place of residence in China of the person to whom the certificate is issued, and that such person is entitled conformably to the treaty in this act mentioned to come within the United States. Such certificate shall be prima facie evidence of the facts set forth therein, and shall be produced to the Collector of Customs, or his Deputy, of the port in the District in the United States at which the person named therein shall arrive.

SEC. 7. That any person who shall knowingly and falsely alter or substitute any name for the name written in such certificate, or forge any such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in any such certificate, shall be deemed guilty of a misdemeanor; and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars, and imprisoned in a penitentiary for a term of not more than five years.

SEC. 8. That the master of any vessel arriving in

the United States from any foreign port or place, shall, at the same time he delivers a manifest of the cargo, and if there be no cargo, then at the time of making a report of the entry of the vessel pursuant to law, in addition to the other matter required to be reported, and before landing, or permitting to land, any Chinese passengers, deliver and report to the Collector of Customs of the District in which such vessel shall have arrived, a separate list of all Chinese passengers taken on board of his vessel at any foreign port or place, and all such passengers on board the vessel at that time. Such list shall show the names of such passengers, (and if accredited officers of the Chinese government, traveling on the business of that government, or their servants, with a note of such facts) and the names and other particulars, as shown by their respective certificates; and such list shall be sworn to by the master in the manner required by law in relation to the manifest of the cargo. Any wilful refusal or neglect of any such master to comply with the provisions of this section shall incur the same penalties and forfeitures as are provided for a refusal or neglect to report and deliver a manifest of the cargo.

SEC. 9. That before any Chinese passengers are landed from any such vessel the Collector, or his Deputy, shall proceed to examine such passengers, comparing the certificates with the list and with the passengers; and no passenger shall be allowed to land in the United States from such vessel in violation of law.

SEC. 10. That every vessel whose master shall knowingly violate any of the provisions of this act shall be

deemed forfeited to the United States, and shall be liable to seizure and condemnation in any District of the United States into which such vessel may enter or in which she may be found.

SEC. 11. That any person who shall knowingly bring into, or cause to be brought into the United States by land, or who shall knowingly aid or abet the same, or aid or abet the landing in the United States from any vessel, of any Chinese person not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined in a sum not exceeding one thousand dollars, and imprisoned for a term not exceeding one year.

SEC. 12. That no Chinese person shall be permitted to enter the United States by land, without producing to the proper officer of Customs the certificate in this act required of Chinese persons seeking to land from a vessel, and any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, by direction of the President of the United States, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or remain in the United States.

SEC. 13. That this act shall not apply to diplomatic and other officers of the Chinese, or other governments, traveling upon the business of that government, whose credentials shall be taken as equivalent to the certificate in this act mentioned, and shall exempt them and

their body and household servants from the provisions of this act as to other Chinese persons.

SEC. 14. That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

Three questions are presented on this appeal:

1st Has a Federal Court authority or jurisdiction to issue a writ of *habeas corpus* in the case of a Chinese person arriving at a port in the United States from a foreign port, who claims to be entitled to land and remain in the United States but who is prevented from landing by the master of the vessel on which he arrives?

2d. Is the decision of the Collector of the Port on the right of said passenger to land final?

3d. Can a Chinese laborer who has departed from the United States and has procured the certificate of identification entitling him to return, and lost the same, land, on making proof of such loss?

POINTS AND AUTHORITIES.

I.

CAN THE COURTS IN THESE CASES ISSUE WRITS OF HABEAS CORPUS?

It would hardly seem that this point requires an answer. It is an elementary principal that any restraint of the liberty of a person constitutes such imprisonment as will entitle him to the benefit of the writ.

The *habeas corpus* act provides that the writ shall extend to all cases of persons *in custody in violation of a law or treaty of the United States.*

U. S. Rev. Stat., sec. 753 (2d ed. 1878).

The treaty of November 17, 1880, between China and the United States, provides that teachers, students, merchants, travelers and all Chinese laborers who were residents of the United States at the date of the treaty, should be permitted to go to and come from the United States of their own free will and accord, and be accorded all the rights, privileges and immunities and exemptions which are accorded to the citizens and subjects of the most favored nations.

22 U. S. Stat. at Large, p. 827.

The Restriction Act above quoted provides in Section 4 for a certificate of identification to be issued to said laborers, and also provides in Section 3 that the provisions of said act shall not apply to laborers who departed from the United States between the date of the treaty and the passage of said act. Said act also provides, in Sec. 6, for a certificate of identification to be issued by the Chinese Government to merchants, students, travelers, diplomats, etc., and Justice Field has decided that Chinese born in the United States are citizens thereof, and are not subject to the provisions of said act.

In re Look Tin Sing, 21 Fed. Rep. 905.

Therefore, there are four classes of Chinese persons who are entitled to come to and remain in the United States.

1st. Chinese laborers who were residents of the United States on November 17, 1880, and who departed therefrom prior to May 6, 1882.

Chew Heong vs. U. S., 112, U. S., 536.

2d. Chinese laborers who departed after the passage of the Restriction Act, and who procured the certificate of identification required by Section 4 thereof.

3d. Chinese merchants, students, travelers, diplomats, etc., who produce the certificate of the Chinese Government required by Section 6 of said Act.

4th. Chinese born in the United States.

If any one of the persons mentioned in either one of the foregoing classes arrives at a port of the United States, and presents to the proper officers the proof of his right to land and, notwithstanding the presentation of such proof, is restrained and prevented from landing, either by the Collector or the captain of the vessel, and is kept in custody on board of said vessel by said master, we respectfully submit that he is restrained of his liberty, and is in custody in violation of both a law and treaty of the United States, and comes within the provisions of Section 753 above quoted, entitling him to the benefit of the writ.

"All persons imprisoned *or under actual restraint*, "except those who, by the *habeas corpus* act, are ex- "cluded, may apply to the proper court or judge for "the writ. It is not necessary that the imprisonment "or restraint should be close confinement to entitle a "party to the writ. *Every restraint* upon a man's lib- "erty is, in the eye of the law, an imprisonment,

"wherever may be the place or whatever may be the "manner in which the restraint is effected."

Hurd on Hab. Cor., p. 200 (2d ed.)

"Any forcible detention of a man's person *or control* "*over his* movements is an imprisonment. Justice "Baldwin defines imprisonment to be the detention of "another against his will, depriving him of the power "of locomotion."

Church on Hab. Cor., Sec. 272.

Lawson vs. Buzines, 3 Harr, (Del.) 418.

U. S vs. Benner, 1 Baldwin, 239.

Johnson vs. Tompkins, 1 Baldwin, 600.

"The object of the *habeas corpus* act was to prevent "any wrongful or illegal restraint of personal liberty, "and whenever a person is deprived of the privilege of "going when and where he pleases, he is restrained of "his liberty, and has a right to enquire if that restraint "be illegal and wrongful, whether it be by a jailer, con- "stable or private individual. It is not necessary that "the degradation of being incarcerated in a prison "should be undergone to entitle any citizen who may "consider himself unjustly charged with a breach of the "laws to a hearing. The whole spirit of the law is in "favor of liberty, and if the words were doubtful, they "should be construed liberally in favor of that blessing."

Church on Hab. Cor., p. 35.

Commonwealth vs. Ridgeway, 2 Ashm, 248.

How then can there be any possible doubt that a man who arrives in the port of San Francisco on a vessel from a foreign port, having a right to land, and intending to land, and who is forcibly and against his

will forbidden to land and retained on board said vessel for the sole and declared purpose of forcibly and against his will carrying him out of the country to a foreign land, is restrained of his liberty in such sense as to entitle him to sue out a writ of *habeas corpus?* What other possible remedy has he against the party who thus restrains the freedom of his action, and who is about to forcibly and against his will, transport him out of the country? There is none.

Writs of *habeas corpus* have been issued and heard in cases like the present by many of the federal judges, notably by Mr. Justice Field, Judge Lorenzo Sawyer of the Circuit Court, Judges Hoffman, Deady, Sabin and Ross of the District Court, Justice Greene of Washington Territory, Judges Lowell and Nelson of the Circuit Court of Massachusetts, from August, 1882, up to the present time, and we would be surprised to learn at this late day that all of these celebrated and learned judges have exceeded their power and authority.

In the case of Chow Gow Pooi on *habeas corpus*, decided in the Circuit Court of California, the question as to the power of said court to issue writs in each case was suggested, and the Court, in its opinion, Sawyer, Hoffman and Sabin, J. J., concurring, said:

"We are unanimously of opinion that when a Chi-
"nese person is detained on board of a ship and re-
"fused the right to land, whether by the authority of
"the master, in pursuance of the provisions of the Re-
"striction Act or by refusal of the Collector to grant
"him permission to land, he is restrained of his lib-
"erty under or by color of the authority of the United

"States, and that he is, as of common right, entitled to "sue out a writ of *habeas corpus*."

In re Chow Gow Pooi, 25 Fed. Rep., 77.

We cannot do better than quote the decision of Judge Hoffman on the demurrer to the intervention in this case, which is as follows:

HOFFMAN, J. "The intervention filed by the District Attorney challenges the jurisdiction of the court upon two grounds: *First*, that the petitioner is not restrained of his liberty within the meaning of the *habeas corpus* act; *Second*, that the Collector has already investigated and passed upon the petitioner's right to land; that the question is therefore *res adjudicata*, and that the court is bound by the Collector's decision, and has no right to further examine into the matter.

1. It is admitted that the petitioner is of the Mongolian race; that he is on board a steamer recently arrived at this port, from which he is not permitted to land. The mode of his restraint is not specified; but if restrained lawfully any force necessary to prevent his leaving the ship can rightfully be applied. It is not denied that it is the intention of the master to retain him on board the ship until her departure, and then to convey him to the port in China from which he came, unless in the meantime the petitioner may find means of getting on board some other ship, without landing on our shores, to be conveyed by her to some foreign country. Whether this proceeding be lawful may involve important questions of law and of fact. The petitioner is a free man, under our flag, and within the protection of our laws. If the denial, therefore, to the

petitioner of the right to land, thus converting the ship into his prison-house, to be followed by his deportation across the sea to a foreign country, be not a restraint of his liberty within the meaning of the *habeas corpus* act, it is not easy to conceive any case that would fall within its provisions.

The second objection raised by the District Attorney is that the Restriction Act commits to the Collector the duty of deciding upon the right to land of any Chinese person arriving in this country; that his decision is final and conclusive, and that this court has no right to review it on the return of the writ of *habeas corpus*.

This claim of exclusive jurisdiction on the part of the Collector must be derived from the provisions of the ninth section of the act of 1882; for no other section of the act affords the slightest color to such a pretension. Section 9 is as follows;

"Before any Chinese passengers are landed from any such vessel, the Collector or his Deputy shall proceed to examine such passengers, comparing the certificates with the list and with the passenger, and no person shall be allowed to land in the United States from such vessel in violation of law."

It will be perceived that the duty imposed upon the Collector is to make the examination mentioned in the section. He is not, in terms, directed to prevent the landing of passengers, but it may reasonably be inferred from the clause which forbids any passengers to be landed in violation of the law that it was intended that he should carry out that provision. But the section affords no color to the extraordinary pretension that

the result of that examination shall be final and conclusive upon the rights of passengers. Such an abrogation of the writ of *habeas corpus*, which has always been considered among English-speaking peoples the most sacred muniment of personal freedom, must be unmistakably declared by Congress before any court could venture to withold its benefits from any human being, no matter what his race or color.

It seems to have been in some quarters overlooked that the Restriction Act does not prohibit the coming into this country of all Chinese persons.

First. The restriction is, both by the treaty and the act of Congress, confined to Chinese laborers; and persons other than Chinese laborers are not prohibited from landing. The passenger arriving here, therefore, may be a Chinese merchant, student, traveler from curiosity, or other person not a laborer. The inquiry into his *status* in this respect is often exceedingly difficult. *Second.* He may also hold a certificate issued by the Custom House authorizing him to re-enter the United States. The question whether such certificate has been fraudulently obtained, and whether the person holding it is entitled to its protection, is frequently raised, and often very difficult of solution. *Third.* He may also, under the decision of the supreme court, be entitled to land without a certificate if it shall appear that he resided in the United States at the date of the treaty and departed therefrom before the Restriction Act went into operation, and before it was possible for him to obtain a return certificate from the Custom House. This inquiry also is exceedingly difficult. *Fourth.* He may

be entitled to land on the ground that he was born in this country, and has therefore the full rights of an American citizen.

Here, also, difficult questions of fact may arise for determination. The Collector who, it is suggested, is charged with the exclusive decision of these questions is not of necessity a lawyer. He discharges his duties by deputy. He is not authorized to administer oaths to witnesses, nor to compel their attendance. The discharge by him of the duties heretofore supposed to belong to the judicial department of the government would be almost impracticable, unless the other duties of his office be neglected. It is believed that in this class of cases the Collector has rarely personally concerned himself with their examination. If I am right in the opinion that a Chinese person, like every other human being in this country, is entitled to the benefits of the writ of *habeas corpus* in order that it may be judicially ascertained whether the restraint of his liberty be lawful or unlawful, to require the court in its investigations to be governed by the decision of an executive officer, acting under instructions from the head of the department at Washington, would be an anomaly wholly without precedent, if not a flagrant absurdity.

The right to a writ of *habeas corpus* is the right to have the lawfulness of the restraint to which the petitioner is subjected inquired into by the courts; to be adjudged and determined by the law of the land. It has not as yet been committed to any purely executive officer."

In a late communication addressed by the Hon. Lorenzo Sawyer, Judge of the U. S. Circuit Court, of California, to the Hon. W. W. Morrow, Congressman from this State, under date of November 26, 1887, the said Judge, in speaking of the power of the courts to issue writs of *habeas corpus* in those cases, says :

"The Collector and press deny the jurisdiction of the "courts to issue writs of *habeas corpus* in these cases. "The Circuit and District Courts have decided other- "wise."

* * * * * * * * *

"The Circuit and District Courts have sustained the "jurisdiction, where the question has been made and "argued. The Circuit Court, Mr. Justice Field presid- "ing, took and exercised jurisdiction in many cases, "sometimes discharging and sometimes remanding the "petitioner. In re Look Tin Sing, 10 Saw., 353; In "re Ah Kee, ib. 337; In re Ah Moy, ib. 345. In re "Kew Ock, ib. 371; In re Chew Heong, ib. 361. And "the Supreme Court of the United States has, also, in "several cases, taken and exercised appellate jurisdic- "tion in these cases, thereby recognizing the jurisdic- "tion. Thus in Chew Heong vs. the United States "112 U. S., 537, the Supreme Court heard and decided "the case on it's merits, reversing the judgment of the "Court below, remanding the petitioner, and 're- "manded the case for further proceedings not incon- "sistent with this opinion' (p. 560). Whereas, if "there was no jurisdiction, the Supreme Court should "have dismissed the appeal, and remanded the case to "the Circuit Court, with directions to dismiss the peti-

"tion and remand the prisoner for want of jurisdiction, "or else have affirmed the judgment of remand, on the "ground that the Circuit Court had no jurisdiction to "make any other order in the case. It may be that no "question as to the jurisdiction was raised in the Su- "preme Court. But, concede this to be so, that court "is not slow to reject cases for want of jurisdiction "when proper, even though the question has not been "raised by counsel, as an examination of the Supreme "Court reports will show.

"The action of the Supreme Court and of the Circuit "Court, one of the Justices of the Supreme Court pre- "siding, recognizing and exercising the jurisdiction and "the decision on the circuit in cases where the ques- "tion was raised and argued, sustaining the jurisdic- "tion, ought at least to have as great weight as the as- "serted assumption of the Collector of the Port to the "contrary, however able and sound a lawyer he may be.

"It has been decided upon full argument by Justice "Field, the Circuit and two District Judges concurring, "that children born in the United States of Chinese "parents residing therein, and not engaged in the ser- "vice of the Chinese Government, are citizens of the "United States under the provisions of the Fourteenth "Amendment to the Constitution, which provides that "'All persons born * * * in the United States "and subject to the jurisdiction thereof are citizens of "the United States,' etc. (Look Tin Sing, 10 Saw., "353). As to such persons, under the Fourteenth "Amendment, no restrictions can be placed on their re-

"turn other than such as are applicable to all other "American citizens.

"A considerable number of Chinese youth born in "the United States, and who are citizens thereof, "who went to China with their parents or friends and "returned, have been discharged on *habeas corpus* by "reason of their right to enter as citizens of the United "States, the Collector having refused to permit them "to land as in the case of prior residents. I suppose "if you yourself should take a trip around the world "and come to San Francisco from Hongkong, and the "Collector should decide that you are a Chinaman, re-"fuse to permit you to land because you have no cer-"tificate, and you were about to be forcibly, and against "your will, carried back to China, you would, as a law-"yer, as well as a man, consider yourself unlawfully re-"strained of your liberty and entitled to a writ of "*habeas corpus* upon which your right to land could "be re-examined by the courts; and that the courts "would have jurisdiction to issue the writ. If not so "entitled, then there is no other remedy under the law "as it now stands, and you would have to go back. I "suppose a citizen, by reason of his birth in this coun-"try, of Chinese parentage would be entitled to the "same remedies as a citizen of Caucasian parentage, "and that the courts would have the same jurisdiction "to determine whether he is such a citizen as they "would to determine whether you are a Caucasian citi-"zen when the citizenship is denied by the Collector. "Under the Fourteenth Amendment, every person "within the United States is entitled to the equal pro-

" tection of the laws, which includes the same remedies. "The Collector's determination of other questions in "the administration of his office is not conclusive. " Suits are almost continually pending in the courts to " recover duties illegally collected, where he has decided "the goods to be liable to the duties collected, and re- "coveries are not infrequently had. What reason is " there, in the case of Chinese claiming the right to " enter under the treaties and the Acts of Congress, for " the decision of the Collector being final, that does not "equally apply to his decisions in other cases."

II

IS THE DECISION OF THE COLLECTOR OF THE PORT ON THE RIGHT OF THE PASSENGERS TO LAND FINAL?

All that has been said on the preceding point is applicable to this.

It will be observed that the power vested in the Collector under the Restriction Act, Section 9, is restricted to comparing the certificates of the passengers with the steamer list.

No clause can be found in the act or in any law of the United States that vests the Collector, either expressly or inferentially with such unlimited power that his decision is final and not subject to review by the courts.

If the position of the Collector is tenable, then it may truly be said that his power is greater even than that of the President of the United States, but we do not think that Congress has as yet deemed it advisable

to vest a subordinate official like the Collector of the Port with autocratic power.

III.

CAN A CHINESE LABORER WHO PROCURED THE CERTIFICATE OF IDENTIFICATION ENTITLING HIM TO RETURN, AND LOST THE SAME, RE-ENTER ON MAKING THE NECESSARY PROOF OF SUCH LOSS?

Section four of the Restriction Act, as amended in 1884, provides that for the purpose of *properly identifying* Chinese laborers, and in order to furnish them with the proper evidence of their right to go from and come to the United States of their own free will and accord, the Collector of Customs shall, in person or by Deputy, go on board each vessel having on board any such Chinese laborer, and cleared or about to sail from his District to a foreign port, and on such vessel make a list of all such Chinese laborers, which shall be entered in registry-books, to be kept for that purpose, in which shall be stated the name, age, occupation, last place of residence, physical marks or peculiarities, and all facts necessary for the identification of each of such Chinese laborers, which book shall be safely kept in the Custom House; and every such Chinese laborer so departing from the United States shall be entitled to, and shall receive upon application therefor, from the Collector or his Deputy, at the time such list is taken, a certificate, signed by the Collector or his Deputy, which certificate shall contain a statement of the name, age, occupation, last place of residence, personal description, and facts of identification of the Chinese

laborer to whom the certificate is issued, corresponding with the said list and registry in all particulars.

The certificate therein provided for entitles the Chinese laborer to whom the same is issued to return to and re-enter the United States upon producing and delivering the same to the Collector of Customs, and it is further provided that said certificate shall be the only evidence permissible to estabish his right of re-entry.

Article 2 of the Treaty of 1880 provided that Chinese laborers who resided in the country at the date of the treaty should be permitted to go from and come to the United States of their own free will and accord; and the only object Congress had in view in the enactment of Section 4 was to provide the class of laborers referred to in Article 2 of the treaty with an easy means of identification in order to facilitate their re-entry.

Congress certainly did not intend when it imposed the onerous conditions required by Section 4, to make a mere piece of paper, which, of itself, has little or no intrinsic value, and is liable to be destroyed by fire or lost through accident, the only evidence.

If a Chinese laborer who is about to return to China is registered, and procures the issuance and delivery to him of the prescribed certificate, he has done all that the law requires, and if he is unfortunate enough to lose the certificate, why may he not on his return, prove his right to re-enter by the register, of which the certificate is merely a copy? The intent and spirit of the

statute is simply that the laborer shall be identified on his return, and the register is certainly as competent to prove this identification as the certificate.

If a man loses a deed of real property or a certificate of stock in a mining corporation, no one would contend that thereby he loses his title to the real estate or his interest in the corporation. In the one case he can produce a certified copy of the deed from the record, and in the other the books of the corporation, and in either case such evidence is as competent in a court of justice as the original deed or certificate, if the loss of said deed and certificate has been established by competent testimony.

In this case the loss of the certificate was proved by competent testimony, the identity of the passenger was satisfactorily established, and it was shown that no one had produced or been landed on the certificate.

We respectfully submit, therefore, that the judgment of the Circuit Court should be affirmed.

THOS. D. RIORDAN,
Att'y for Respondent.